No. 08-1314

Supreme Court, U.S.
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In The

Supreme Court of the United States

DELBERT WILLIAMSON, *et al.*,

Petitioners,

v.

MAZDA MOTOR OF AMERICA, INC., *et al.*,

Respondents.

On Writ Of Certiorari to The California Court Of Appeal, Fourth Appellate District, Division Three

BRIEF OF PUBLIC JUSTICE, P.C., AS *AMICUS CURIAE* IN SUPPORT OF PETITIONERS

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INTEREST OF *AMICUS CURIAE*

Public Justice is a national public interest law firm dedicated to pursuing justice for the victims of corporate and government abuses. Through involvement in precedent-setting and socially significant litigation, Public Justice seeks to ensure that tort law fully serves its dual purposes of compensating those injured by wrongful conduct and deterring similar conduct in the future. Public Justice is gravely concerned that, if the tort system is limited excessively through an improper application of fundamental preemption principles, neither of these purposes will be served.[1]

SUMMARY OF ARGUMENT

One decade ago, in *Geier v. American Honda Motor Co.*, 529 U.S. 861 (2000), Justice John Paul Stevens, joined by three other members of this Court, warned that the majority's relatively unrestrained approach to implied conflict preemption could lead to federal judges "running amok with our potentially boundless (and perhaps inadequately considered) doctrine of implied conflict pre-emption based on frustration of purposes. . . ." *Id.* at 886 (Stevens, J.,

[1] *Amicus* is the sole author of this brief. No one other than *amicus* or its members made a monetary contribution to its preparation or submission. The parties have filed letters giving blanket consent to the filing of *amicus* briefs in this case.

dissenting). His prophetic words, alas, have proven all too true. In the 10 years since *Geier* was decided, it has generated immense confusion among the lower courts about the proper approach to determining whether a state tort lawsuit conflicts with federal regulatory purposes, and thus is preempted. Not only has *Geier* generated chaos in the auto safety arena, but the decision has metastasized into numerous other areas involving federally regulated products, leading courts to find federal preemption under circumstances that Congress could not conceivably have intended.

The confusion generated by *Geier* can – and, we submit, should – be addressed on at least two levels. First, the time is more than ripe for this Court to reconsider the meaning of the savings clause set forth in the National Motor Vehicle Safety Act, 49 U.S.C. §§ 30101 *et seq.*, (the "Safety Act"), which provides that "[c]ompliance with any Federal motor vehicle safety standard issued under this subchapter does not exempt any person from any liability under common law." *Id.* at § 30103(e).

In *Geier*, this Court – after some equivocation – held that the savings clause does not "foreclose or limit the operation of ordinary 'conflict' preemption principles." 529 U.S. at 868. To hold otherwise, the Court said, could permit a state to "impose legal duties that would conflict directly with federal regulatory mandates, say, by premising liability upon the presence of the very windshield retention requirements that federal law requires" – a result

that, in the majority's view, Congress could not logically have intended. *Id.* at 871.

But there is another, narrower interpretation of the savings clause that is far more consistent with its plain language and history: to wit, that Congress merely intended to "save" from preemption claims that a car maker should have done more than the minimum required by a federal auto safety standard. Under this reading, any claims premised "upon the presence of the very . . . requirements that federal law requires" *would* be subject to implied conflict preemption. *Id.* This interpretation of the clause, which would leave so-called "impossibility"-type claims subject to preemption but preserve all others, is true to the language of the Safety Act and would effectively resolve much of the turmoil caused by *Geier*, both in the auto safety arena and elsewhere.[2]

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[2] This Court has described "impossibility" preemption as occurring where it is "impossible for a private party to comply with both state and federal requirements." *Freightliner Corp. v. Myrick*, 514 U.S. 280, 287 (1995) (internal quotations omitted). Even though a jury verdict in a tort suit does not require a manufacturer to change its conduct in any respect, but instead merely requires the payment of damages, this Court has used "impossibility" to describe a case where a plaintiff's common-law claims are premised on, as Justice Breyer wrote, the presence of a particular design feature that federal law affirmatively requires. *Geier*, 529 U.S. at 871; *see generally Wyeth v. Levine*, 129 S. Ct. 1187, 1208-09 (Thomas, J., concurring) (describing various formulations this Court has used "in deciding whether state and federal law conflict, and thus lead to pre-emption, under the 'impossibility' doctrine.").

But assistance is needed on a broader level as well. The confusion generated by *Geier* is also symptomatic of a deeper doctrinal malady with regard to implied conflict preemption writ large. This Court has long struggled to find a workable approach in this area, which lies at the delicate intersection between the Supremacy Clause and the core values of federalism on which this country was founded. *Geier* attempted to navigate that junction by instructing courts to conduct highly particularized and fact-based inquiries into the underlying "purposes" of federal regulations, and then to determine whether those purposes would somehow be undermined by a state court lawsuit seeking damages from a federally-regulated tortfeasor. But, as Justice Stevens predicted, *Geier* has produced an incoherent morass of unprincipled decisions. That is not surprising, given that nine members of this Court could not, after intensely close scrutiny, agree on the core purposes underlying the single regulation at issue in *Geier*. Indeed, the mere fact of the deeply split decision in that case illustrates the unworkability of the standard enunciated by the majority's opinion.

This case presents an opportunity to correct this problem once and for all. As Justice Thomas has observed, what is needed is a workable standard that is faithful both to the U.S. Constitution and to the states' right to compensate their injured citizens through the tort system. *See Wyeth v. Levine*, 129 S. Ct. 1187, 1204 (2009) (Thomas, J., concurring). This brief advocates a standard that eliminates the

"frustration-of-purposes" branch of implied conflict preemption analysis in favor of a rule that would focus solely on the extent to which a state law claim would directly contradict a specific federal mandate. Such a standard, which would limit implied conflict preemption to instances of so-called "impossibility," would solve the vexatious problems created by the approach adopted in *Geier* and, at the same time, respect the core values underlying the Supremacy Clause of the U.S. Constitution.

ARGUMENT

I. *GEIER* HAS BEEN WIDELY MISINTERPRETED AND MISAPPLIED BY THE COURTS AND THE EXECUTIVE BRANCH.

As the United States has observed, the lower courts "are currently in conflict about how to apply the reasoning of *Geier* to claims of [auto safety] preemption generally." U.S. Br. in Supp. of Review at 17-21. This assertion, while true, understates the problem to a large degree. As explained below, not only has *Geier* generated judicial confusion in the auto safety arena, but it has been misapplied in a host of other areas as well. Various executive agencies, including the National Highway Traffic Safety Administration ("NHTSA"), have also improperly interpreted *Geier* as authorizing them to mandate widespread preemption by regulatory fiat.

A. *GEIER* HAS GIVEN RISE TO A HOST OF IMPROPER DECISIONS FINDING PREEMPTION IN AREAS AFFECTING PUBLIC HEALTH AND SAFETY.

1. Auto Safety. Although *Geier*'s ruling was a narrow one, reflecting the unique history of the 1984 version of Federal Motor Vehicle Safety Standard ("FMVSS") 208 governing passive restraints in cars (and, in particular, the agency's objectives with regard to airbags), car manufacturers have used *Geier* to win far broader preemption rulings in areas that have nothing to do with airbags, arguing, in many cases, that the mere fact of a regulatory option is a sufficient basis for a court to find federal preemption. Thus, for example, immediately in the wake of *Geier*, a number of courts extended the majority's holding to cases involving challenges to a car maker's design of one of the other passive-restraint options permitted by the 1984 version of Standard 208.[3] Although readily distinguishable from *Geier* (in that they did not implicate any of the federal government's concerns about airbags), these courts and others were

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[3] *See, e.g., Carasquilla v. Mazda Motor Corp.*, 166 F. Supp. 2d 169 (M.D. Pa. 2001) (finding federal preemption of lawsuit challenging design of system that included automatic shoulder harness and manual lap belt); *Hernandez-Gomez v. Volkswagen of America, Inc.*, 32 P.3d 424 (Ariz. App. Div. 2001) (finding federal preemption of lawsuit challenging design of system that included automatic shoulder harness and no lap belt).

persuaded that *Geier* mandates preemption in all cases involving any sort of passive restraint in cars.

Courts have also extended *Geier* to cases involving *manual* belting systems in cars, which have nothing to do with the passive-restraint rule at issue in *Geier*. In *Griffith v. Gen'l Motors Corp.*, 303 F.3d 1276 (11th Cir. 2002), for example, the Eleventh Circuit found implied conflict preemption of a claim that General Motors was negligent for failing to provide a shoulder belt along with a lap belt in the front-center seat of a pickup truck. The Court held that the claim was preempted on the ground that it would conflict with a federal regulation that gave car makers the option of installing either a lap belt or a lap/shoulder belt in the front-center seats of cars (a seating position that was expressly exempted from the passive-restraint rule at issue in *Geier*). *Id.* at 1282. In so ruling, the Eleventh Circuit simply assumed, without citation to any supporting regulatory authority, that the federal agency goal underlying the standard at issue in *Geier* – specifically, the goal of encouraging a mixture of passive-restraint systems – also existed with respect to manual restraint systems, even though the federal government has never articulated any such goal with respect to manual restraints. *Id.* at 1281.

Griffith's misguided reading of *Geier* then spread to cases involving manual restraints in the rear-center seats of cars (which is closely related to the fact pattern of this case, which involves manual restraints in the aisle seat of a minivan). This trend

started with conflicting state court rulings in two cases similar to this one. In each case, the plaintiff was badly injured in the rear-center seat of a passenger car, which was equipped with a lap-belt rather than a lap/shoulder belt.[4]

At the time the cars were manufactured (in the late-1980s), federal law gave manufacturers the option of installing either lap-belts or lap/shoulder belts in the rear-center seats of cars. *See Heinricher v. Volvo Car Corp.*, 809 N.E.2d 1094, 1095-96 (Mass. 2004). This regulatory option, however, was not based on any of the special agency concerns at issue in *Geier* (namely, the desire to foster and phase in a diverse array of passive restraint technology). Rather, the rear-center-seat option, which was originally promulgated in 1967 along with the first set of minimum safety standards ever passed by the federal government, was unaccompanied by any special statement of agency purpose and appeared to be designed merely to codify existing industry practices. (At the time, car makers were installing both lap-belts and lap/shoulder belts in the rear seats of cars.) *See* 32 Fed. Reg. 2,408, 2,415 (Feb. 3, 1967). Since 1967, moreover, it had become increasingly clear to everyone – including the federal government – that lap/shoulder belts were, in fact, the safest form of

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[4] *See Heinricher v. Volvo*, 809 N.E.2d 1094 (Mass App. Ct.), *rev. denied*, 315 N.E.2d 1085 (Mass. 2004); *Brailsford v. Nissan*, No. 030-015647-CA (Fla. 17th Cir. Ct.).

restraint system for rear-center seats. *See, e.g.* 54 Fed. Reg. 25,275 (June 14, 1989).

Despite the obvious differences between the rear-center-seat option involved in these cases and the passive-restraint option at issue in *Geier*, the defendants in both *Heinricher* and *Brailsford* argued that the mere fact of a regulatory option demonstrates a federal desire to promote a diverse array of safety technology – the same purpose at issue in *Geier*. Ultimately, the *Brailsford* trial court rejected the defendant's argument in an unpublished one-paragraph order. But the *Heinricher* court disagreed, and issued a decision, later mirrored in *Carden v. Gen'l Motors Corp.*, 509 F.3d 227, 232 (5th Cir. 2007), that, pursuant to *Geier*, the plaintiffs' claims were preempted by NHTSA's decision to provide a regulatory option. *See* 809 N.E.2d at 1098.

This is but a sampling of the myriad adverse rulings generated by *Geier* in the auto safety context.[5]

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[5] Indeed, just four days ago, the Supreme Court of South Carolina added its own voice to the growing cacophony, misapplying *Geier* to hold that a mere options standard (in this case Standard 205) preempts a common-law tort suit. *Priester v. Cromer*, 2010 WL 2990978 (S.C. Aug. 2, 2010). The court acknowledged the confusion among lower courts, admitting that "courts across the country are struggling over Regulation 205 and whether it preempts conflicting state law actions." *Id.* at * 4. Nevertheless, the court decided that, "in the absence of a determination from the United States Supreme Court on this matter," because "the purpose of the regulation is to provide an automobile manufacturer with a range of choice among different types of glazing materials, as opposed to providing a minimum

(Continued on following page)

Even these few cases, however, illustrate the various ways in which lower courts have misinterpreted *Geier* to mean that *any* regulatory option exerts preemptive effect – a position that the United States has, in fact, disavowed in both this case and several pre-*Geier* cases as well. *See* U.S. Br. in Supp. of Review at 18.

2. Other Consumer Products. Another example of lower court misinterpretation of *Geier* comes in the prescription drug context. Prior to this Court's decision in *Wyeth*, the Third Circuit cited *Geier* as support for its ruling that a minimum labeling standard promulgated by the Food and Drug Administration ("FDA") preempted failure-to-warn claims involving brand-name prescription drugs. *Colacicco v. Apotex*, 521 F.3d 253 (3d Cir. 2008), *vacated*, 129 S. Ct. 1578 (2009). The defendants in *Wyeth* similarly relied on *Geier* as support for their preemption arguments – a tactic that prompted Justice Stevens, writing for the *Wyeth* majority, to issue a stern reminder that the regulations at issue in *Wyeth* and *Geier* were "very different." 129 S. Ct. at 1203; *but see id.* at 1217 (Alito, J., dissenting) (arguing that the majority's ruling "cannot be reconciled with *Geier*.").

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standard," the tort suit is preempted. *Id.* This decision only deepens the split among lower courts over the correct interpretation of Standard 205 and its preemptive effect. *See O'Hara v. Gen'l Motors Corp.*, 508 F.3d 753 (5th Cir. 2007); *Morgan v. Ford Motor Co.*, 680 S.E.2d 77 (W.Va. 2009).

In the wake of *Colacicco*, the Eastern District of Pennsylvania held that state-law claims related to radio frequency ("RF") emissions of cellular phones are impliedly preempted by federal law. *Farina v. Nokia*, 578 F.Supp.2d 740, 769 (E.D. Pa. 2008). There, the Federal Communications Commission ("FCC") set a "maximum limit" for RF emissions from cellular phones that was higher than the limit plaintiff claimed could cause biological damage. *Id.* at 769-70. The district court, applying *Geier* and *Colacicco*, dismissed the case on preemption grounds, reasoning that the plaintiff's attempt to "hold the manufacturers . . . liable even though [the plaintiff] [did] not allege that they failed to meet the required FCC standard" was "no different from the claim rejected by the Supreme Court in *Geier*." *Id.* In so ruling, *Farina* ignored *Geier*'s teaching that federal law does not preempt state-law claims "that seek to establish greater safety than the minimum safety achieved by a federal regulation intended to provide a floor." *Geier*, 529 U.S. at 868.

Before this Court intervened to address the problem, the Illinois Supreme Court likewise misapplied *Geier* in holding that the Federal Boat Safety Act ("FBSA"), 46 U.S.C. §§ 4301-4311, preempted state law claims that a boat manufacturer should be held liable for failing to install propeller guards on its motor boat engine. *See Sprietsma v. Mercury Marine*, 757 N.E.2d 75, 86 (Ill. 2001). There, the plaintiff claimed that a manufacturer was negligent for failing to install propeller guards on its motor boat engines. The manufacturer argued for preemption based on

the U.S. Coast Guard's decision not to require propeller guards on all boat engines. *Id.* at 83. Though the court acknowledged that the regulation at issue in *Geier* was highly-particularized and designed to promote unique agency goals, it ultimately read *Geier* as a one-size-fits-all recipe for implied conflict preemption and held that the plaintiff's claims were preempted by the Coast Guard's regulatory inaction, *id.* at 84-86 – a ruling that was then reversed by unanimous decision of this Court. *See Sprietsma v. Mercury Marine*, 537 U.S. 51 (2002).[6]

Sprietsma, however, did not cure the problems created by *Geier*. To the contrary, courts continued to distort *Geier* by applying it to facts more appropriately resolved by *Sprietsma*. The Eastern District of Tennessee, for example, held that state-law claims alleging that a bus manufacturer was negligent for not installing seatbelts are preempted by Standard 208, despite acknowledging that the standard was silent about seatbelts in buses. *Surles v. Greyhound Lines, Inc.*, 2005 WL 1703153, at *5-6 (E.D. Tenn. July 20, 2005). The court declined to apply *Sprietsma* even though NHTSA had not taken regulatory action, and used *Geier* instead to find preemption. *Id.*

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[6] The state high court reached this conclusion despite the fact that the FBSA contains a savings clause almost identical to the clause in the National Motor Vehicle Safety Act. *See* 46 U.S.C. § 4311(g) ("[c]ompliance with this chapter or standards, regulations, or orders prescribed under this chapter does not relieve a person from liability at common law or under State law").

Courts have also misapplied *Geier* in the area of consumer products. For example, the Eastern District of Missouri recently looked to *Geier* to find that, notwithstanding the savings clause contained in the Consumer Products Safety Act,[7] a minimum standard regulating the flammability and viscosity of contact adhesives promulgated by the Consumer Products Safety Commission ("CPSC") preempted state product liability claims. *Mwesigwa v. DAP, Inc.*, 2010 WL 979697, at *4 (E.D. Mo. Mar. 12, 2010). In so ruling, the court read *Geier* in reductive terms, as holding "that a common-law tort action, which would effectively mandate air bags, conflicted with the federal safety standard," *id.*, and ignored the fact that the CPSC had merely established minimum standards for the flammability and viscosity of contact adhesives – the type of regulation that, under *Geier*, should have no preemptive effect. *See* 529 U.S. at 874.

Likewise, *Geier* has been applied to hold that federal minimum safety standards preempt claims that certain mobile homes were unfit for human habitation. *See In re FEMA Trailer Formaldehyde*

[7] This savings clause provides that "[c]ompliance with consumer product safety rules or other rules or orders under this chapter shall not relieve any person from liability at common law or under State statutory law to any other person." 15 U.S.C. § 2075.

Products Liability Litigation, 620 F. Supp. 2d 755 (E.D. La. 2009). In *FEMA*, the plaintiffs – residents of emergency housing units ("EHUs") provided by the federal government in the wake of Hurricanes Katrina and Rita – alleged that their EHUs contained unsafe amounts of formaldehyde. *Id.* at 756. Under the Manufactured Home Construction and Safety Standards Act ("MHA"), 42 U.S.C. §§ 5401-5426, the Department of Housing and Urban Development ("HUD") was tasked with regulating the acceptable level of formaldehyde gas exposure inside of a mobile home.[8] *Id.* at 757. During its rulemaking, HUD weighed two alternative standards: an "ambient air" standard, which measures the amount of formaldehyde in the air of the mobile home, and a "product standard," which measures the amount of formaldehyde in the constituent pieces of the mobile home. *Id.* at 763. HUD chose to adopt the "product standard" instead of the "ambient air" standard. *Id.*

In their lawsuit, the plaintiffs did not allege that their EHUs failed to meet HUD's "product standard" regulations; instead, they merely asserted that the

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[8] The MHA, like the Motor Vehicle Safety Act, the Boat Safety Act, and the CPSA, also contains a savings clause, which states that "[c]ompliance with any Federal manufactured home construction or safety standard issued under this chapter does not exempt any person from any liability under common law." 42 U.S.C. § 5409(c).

manufacturers should have limited the amount of formaldehyde in the air of their EHUs – a duty that, under *Geier*, state law should have been free to impose. *See* 529 U.S. at 868. The Eastern District of Louisiana nonetheless held the plaintiffs' claims to be preempted under *Geier*, reasoning that to hold the manufacturer liable for failing to meet an "ambient air" standard not required by federal law "would serve as an obstacle to [HUD]'s objectives of achieving a balance between uniformity, safety, and affordability." *In re FEMA*, 620 F. Supp. 2d at 766 (citing *Geier*, 529 U.S. at 881).

* * *

Geier has thus been applied to invalidate a host of state law claims, both in the auto safety context and in a broad range of other areas involving federally regulated products in which Congress could not conceivably have intended to displace state law. In the auto safety context, *Geier* has repeatedly been read to mean, simply, that "regulatory options equal preemption." And, in numerous other areas courts have read *Geier* as mandating a finding of preemption even in cases involving minimum standards, despite *Geier*'s own clear statement that such standards do not exert preemptive effect. Plainly this will not do. Yet, absent clear guidance from this Court, *Geier* will continue to sow confusion in the courts below.

B. NHTSA AND OTHER AGENCIES HAVE MISINTERPRETED *GEIER* AS AUTHORIZING PREEMPTION BY REGULATORY FIAT.

Geier's approach to implied conflict preemption has also produced uncertainty in the executive branch. After *Geier* was decided, NHTSA issued, in short order, three separate proposed rules that purported to have preemptive effect. Following NHTSA's lead, other agencies began their own attempts at preemption by regulatory fiat. As this Court has wisely remarked in the context of agency-created causes-of-action, "[a]gencies may play the sorcerer's apprentice but not the sorcerer himself." *Alexander v. Sandoval*, 532 U.S. 275, 291 (2001). Despite this warning, however, NHTSA and other federal agencies, either explicitly or implicitly relying on *Geier*, have taken the position that state-law claims would undermine their regulatory purposes, and thus should be preempted.

1. NHTSA's Preemption Preambles. This approach began when NHTSA proposed altering the definition of a "designated seating position" ("DSP") in passenger vehicles. *See* 70 Fed. Reg. 36,094, 36,096 (June 22, 2005). The agency suggested adopting the Society of Automotive Engineers' definition of a 5th-percentile female passenger for the proper measure of hip-room to measure a DSP. *Id.* Citing *Geier*, NHTSA argued, in a preamble to the proposed rule, that the altered rule would preempt all state laws, regulations, and requirements – including state tort law –

because any additional safety standards would frustrate the agency's purpose of promoting seatbelt use. *Id.* at 36,098.

Shortly thereafter, NHTSA included preemptory language in its proposal to increase minimum standards for roof strength and headroom in order to prevent rollover-related deaths. *See* 70 Fed. Reg. 49,223, 49,235 (Aug. 23, 2005). Though the proposed change only strengthened existing minimum standards – and thus, under *Geier*, should not have exerted any preemptive effect – NHTSA asserted that any state law seeking to hold a car maker liable for failing to make a roof stronger than the new regulatory minimum would "frustrate the agency's objectives by upsetting the balance between efforts to increase roof strength and reduce rollover propensity." *Id.* at 49,245. Accordingly, the agency asserted that the changed rule would "preempt all conflicting State common law requirements, including rules of tort law." *Id.* at 49,246.

Less than a month after the rollover rulemaking notice, NHTSA purported to preempt state tort law in a notice of proposed rulemaking regarding the rearview standards for large trucks. *See* 70 Fed. Reg. 53,753, 53,768 (Sept. 12, 2005). Even though this proposed options standard was unsupported by any of the policy reasons at issue in *Geier*, the agency asserted that any state-law requirements above and beyond the federal minimum would upset the agency's "careful balancing of a variety of considerations and objectives in this field," as well as its

interpretation of Congress's intent to have uniform standards for trucks. *Id.* at 53,768-53,769.

2. Other Agencies' Preemptive Actions. Thereafter, other agencies followed NHTSA's lead and inserted preemptory language into the preambles of proposed and final rules. For example, despite the savings clause in its governing statute, *supra* n.7, the CPSC included a preemption provision in a rulemaking notice related to minimum flammability standards for mattresses that read: "[t]he Commission intends and expects that the new mattress flammability standard will preempt inconsistent state standards and requirements, whether in the form of positive enactments or court created requirements." 71 Fed. Reg. 13,472, 13,496 (Mar. 15, 2006). Similarly, in the 2006 preamble that was ultimately rejected by this Court in *Wyeth*, the FDA opined that state-law failure-to-warn actions regarding prescription drugs could "frustrate the agency's implementation of its statutory mandate" to provide minimum labeling standards for drugs. 71 Fed. Reg. 3,922, 3,934 (Jan. 24, 2006).

3. Efforts at Curbing Regulatory Preemption. These attempts to preempt state tort law without express Congressional authorization created a firestorm of controversy within the legal community

and press.[9] Likewise, members of Congress demanded answers from the agencies, to no avail.[10]

Ultimately, however, shifting political tides and priorities ended NHTSA's and other agencies' preemption assertions. After President Barack Obama took office, NHTSA vacated the preemption language in the preamble to its roof-strength rule. *See* 74 Fed. Reg. 22,348, 22,380-22,383 (May 12, 2009). President Obama then issued an executive memorandum forbidding agencies from promulgating unsupported

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[9] *See generally* Catherine Sharkey, *Preemption by Preamble: Federal Agencies and the Federalization of Tort Law*, 56 DEPAUL L. REV. 227 (2007) (examining controversy surrounding preemption by regulatory fiat); William Buzbee, *Asymmetrical Regulation: Risk, Preemption and the Floor/Ceiling Distinction*, 82 N.Y.U. L. REV. 1547, 1573 (2007) (noting the sudden explosion of regulatory preemption provisions during the Bush Administration); Samuel Issacharoff & Catherine Sharkey, *Backdoor Federalization*, 53 UCLA L. REV. 1353 (2006) (same); Stephen Labaton, "'Silent Tort Reform' Is Overriding States' Powers," N.Y. TIMES, Mar. 10, 2006, at C5 (highlighting preemption by regulatory fiat as a new approach to federal preemption).

[10] Senators Arlen Specter and Patrick Leahy demanded an explanation as to how, in the absence of an express preemption clause by Congress, the agency thought it had the authority to preempt state law by mere regulatory fiat. *See* Letter from Senators Arlen Specter and Patrick Leahy to Jacqueline Glassman, Acting Director of NHTSA (Nov. 17, 2005). Similarly, in response to the CPSC's mattress flammability rulemaking, Senator Daniel Inouye raised concerns about the persistent adverse safety effects preemption by regulatory fiat could have on consumers for years to come. Letter from Senator Daniel Inouye to Hal Stratton, CPSC Chairman (Feb. 13, 2006).

preemptive preambles. 74 Fed. Reg. 24,693 (May 20, 2009).

In response, NHTSA vacated the preemptory language of its other rulemakings. *See* 74 Fed. Reg. 68,185, 68,188-68,189 (Dec. 23, 2009). Several months later, the agency admitted that, notwithstanding all its former statements, there had never been any conflict between any of the post-*Geier* regulations and common-law claims, and that all its statements to the contrary were a mistake. In so doing, the agency emphasized its "strong belief that State law can play an important role in safeguarding public safety." *See* 75 Fed. Reg. 33,515, 33,524 (June 14, 2010).

* * *

It is likely that none of this would have occurred had it not been for *Geier*. By embracing the "frustration-of-purposes" branch of implied conflict preemption, this Court virtually invited various agencies to begin asserting that regulations exerted preemptive effect even if the agencies' authorizing statutes said otherwise. These reactions overstepped the limits of the agencies' authority. Congress, of course, is the only branch that is accorded the power to preempt state laws, and it is the job of courts, not of federal agencies, to determine the existence of preemption. *See Wyeth*, 129 S. Ct. at 1207-08 (Thomas, J., concurring). Moreover, (as NHTSA ultimately conceded) the agencies' conclusions were not even faithful to *Geier* itself, which, for all its flaws, at least made clear that mere minimum

standards do not exert preemptive effect. This Court may have intended *Geier* to be a limited holding, *see* 529 U.S. at 867 (majority opinion) (cautioning that its holding was limited to "th[ese] kind[s] of 'no airbag' lawsuits"), but agencies have understood the decision to further preemptive goals never intended by Congress. Unless and until *Geier* is clarified, there is always a chance that this confusion will resurface.

II. THIS COURT SHOULD CLARIFY THAT THE SAFETY ACT'S SAVINGS CLAUSE EXPRESSLY PRESERVES ALL COMMON-LAW CLAIMS THAT WOULD HOLD A MANUFACTURER LIABLE FOR FAILING TO DO MORE THAN THE MINIMUM REQUIRED BY A FEDERAL SAFETY STANDARD.

In light of the foregoing, there can be no doubt that *Geier* has created significant practical problems for courts that are tasked with deciding whether a federal law displaces a state common-law tort claim. But much of the current disarray stems from – and could be addressed by resolving – *Geier's* own confusion regarding the exact role of the Safety Act's savings clause vis-à-vis state-law claims.[11]

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[11] The savings clause reads as follows: "[c]ompliance with any Federal motor vehicle safety standard issued under this subchapter does not exempt any person from any liability under common law." 49 U.S.C. § 30103(e). The Safety Act also contains an express preemption provision, *id.* § 30103(b)(1), which this

(Continued on following page)

1. In *Geier*, the majority seemed to vacillate over the exact meaning and effect of the savings clause, leading it to adopt a pair of seemingly contradictory conclusions. At the outset, Justice Breyer acknowledged that, in order to give "actual meaning to the saving clause's literal language," it must be "assume[d] that there are some significant number of common-law liability cases to save." *Geier*, 529 U.S. at 868. He therefore stated that the savings clause "preserves those actions that seek to establish greater safety than the minimum achieved by a federal regulation intended to provide a floor." *Id.*

Later in the opinion, however, Justice Breyer backed away from this interpretation of the clause, based on a belief that the absence of ordinary preemption principles could permit a state law to "impose legal duties that would conflict directly with federal regulatory mandates, say, by premising liability upon the presence of the very windshield retention requirements that federal law requires," thereby causing the Safety Act to "destroy itself." *Id.* at 871-72 (internal citations and quotations omitted). Based on this concern, he then wrote that the savings clause did not "foreclose or limit the operation of ordinary 'conflict' preemption principles. . . ." *Id.* at 868.

These seemingly disparate conclusions about the meaning of the savings clause produce a thorny

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Court held in *Geier* does not expressly preempt any common-law claims. 529 U.S. at 868.

paradox: if the savings clause does, in fact, "preserve[] those actions that seek to establish greater safety than that imposed by a federal regulation intended to provide a floor," *id.* at 868, then it necessarily bars the application of ordinary conflict preemption principles to those claims – something that the Court explicitly said the savings clause does not do. *See id.* at 869. If, on the other hand, the savings clause does not limit "the operation of ordinary 'conflict' preemption principles . . . ," *id.*, then what did the Court mean when it said that the clause "preserves those actions that seek to establish greater safety than the minimum achieved by a federal regulation intended to provide a floor"? *Id.*

2. Given the confusion caused by *Geier*, this Court should address and resolve this incongruity. The first step toward doing so is to recognize that Justice Breyer's concern that a broad reading of the savings clause would permit the statute to "destroy itself," *id.* at 872, is based on a misreading of the Safety Act as a whole. When Congress passed the Safety Act in 1966, it empowered NHTSA to prescribe "motor vehicle safety standards," which *Congress* defined as "*minimum* standard[s] for motor vehicle performance or motor vehicle equipment performance. . . ." 49 U.S.C. § 30102(a)(9) (emphasis added). As a result, NHTSA is only authorized to issue standards that set minimum safety floors that automobile manufacturers must meet. *See Geier*, 529 U.S. at 903 (Stevens, J., dissenting) (pointing out that the majority "completely ignores the important fact

that by definition all of the standards established under the Safety Act . . . impose minimum, rather than fixed or maximum, requirement); *see also Wyeth*, 129 S. Ct. at 1201 ("[A]gencies have no special authority to pronounce on pre-emption absent delegation by Congress."); *New York v. FERC*, 535 U.S. 1, 18 (2002) ("[A] federal agency may pre-empt state law only when it is acting within the scope of its congressionally delegated authority[,] . . . [for] an agency literally has no power to act, let alone pre-empt the validly enacted legislation of a State, unless and until Congress confers power upon it.").

In light of this statutory limitation on the agency's authority, Congress could only logically have intended for the savings clause to preserve common-law tort actions seeking to hold a manufacturer liable for failing to do more than a regulation required – which, by definition, is a minimum standard. For this type of claim, one based on a theory that the manufacturer should have done more than the bare minimum required by federal law, the savings clause makes clear that *there is no conflict* with the federal regulation. But the sort of claim posited by the *Geier* majority, which would "premise liability upon the presence of the very . . . requirements that federal law requires," *id.* at 871, would not be "saved" from preemption by virtue of the savings clause, because the clause was never intended to address this type of claim in the first place.

Under this reading of the clause, there is no scenario under which the Safety Act would "destroy

itself"; to the contrary, it is clear that Congress intended to exclude from the scope of the clause any claim that would seek to hold a manufacturer liable for failing to take some action that would actually violate federal law. *See id.*[12] When read in conjunction – as it must be – with Congress's explicitly limited delegation to NHTSA to issue minimum standards, the savings clause does not bar the operation of ordinary conflict preemption principles for *only* those

[12] This interpretation is supported by the Safety Act's legislative history. The savings clause was added to the legislation in response to the testimony of an attorney from South Carolina, Tom Triplett, who expressed concern that, "[i]f the Government assumes the responsibility of safety design in our vehicles, the manufacturers will join together for another 30 year snooze under the veil of Government sanction and in thousands of courtrooms across the Nation wronged individuals will encounter the stone wall of 'Our product meets Government standards,' and an already compounded problem will be recompounded." *Hearings on H.R. 13228 Before the House Committee on Interstate and Foreign Commerce*, 89th Cong., 2d Sess. 1249 (1966). Consistent with the foregoing, the House Committee amended the original House bill by inserting a savings provision identical in all respects to the savings provision ultimately signed into law. *See* 112 Cong. Rec. at 19857 (1966). This savings provision was explained in the House Committee Report as follows: "It is intended, and this subsection specifically establishes, that *compliance with safety standards is not to be a defense or otherwise to affect the rights of parties under common law particularly those relating to warranty, contract, and tort liability.*" H.R. Rep. No. 1776, 89th Cong., 2d Sess. 24 (1966) (emphasis added). (A thorough discussion of the legislative history of the Safety Act's savings clause is set forth in the petitioner's opening brief in *Geier*. *See* Br. of Petitioner, No. 98-1811 (U.S. Oct. 22, 1999).)

"impossibility"-type cases where the claims would impose requirements that "conflict directly with regulatory mandates. . . ." *Id.* at 872. For all *but* these claims, the clause operates to expressly preserve them.

Giving the savings clause its intended meaning would both correct misapplication of *Geier* in the auto safety context and also clarify the law in cases involving other statutes containing similar savings clauses. *See, e.g., supra* at nn.6-8. The Court should take this opportunity to remind courts that when an agency is empowered only to promulgate a minimum safety standard against the backdrop of an explicit savings clause, Congress has expressly preserved state-law claims that seek to hold a manufacturer liable for failing to do more than the minimum required by that regulation.

III. THE DOCTRINE OF IMPLIED CONFLICT PREEMPTION SHOULD BE GREATLY RESTRICTED TO AVOID UNDUE INTERFERENCE WITH STATE AUTHORITY.

Although many of the problems created by *Geier* would be cured by giving the Safety Act's savings clause (and others like it) its full meaning, such a holding would do nothing to address the broader difficulties created by the "frustration-of-purposes" arm of implied conflict preemption. As the *Geier* dissenters predicted, this Court's current "frustration-of-purposes" preemption doctrine encourages a

free-ranging judicial expansion of federal power unmoored from the text of a congressional statute – an expansion that undermines core federalism values and upsets the balance established by the Framers. By emphasizing that implied conflict preemption should only be found in the rarest of circumstances – e.g., the "impossibility" scenario posited by the *Geier* majority – this Court would realign implied conflict preemption jurisprudence with the core principles underlying the Supremacy Clause and solve the vexatious problems created by its past missteps.

A. THE "FRUSTRATION-OF-PURPOSES" ARM OF IMPLIED CONFLICT PREEMPTION ANALYSIS SHOULD BE ELIMINATED.

1. A decade ago, Justice Stevens – joined by three other Members of this Court – warned of the threat posed by an uncabined "frustration-of-purposes" preemption standard. "[T]he Supremacy Clause does not give unelected federal judges *carte blanche* to use federal law as a means of imposing their own ideas of tort reform on the States." *Geier*, 529 U.S. at 894 (Stevens, J., dissenting). Instead, he wrote, state laws "are not to be pre-empted by a federal statute unless it is the clear and manifest purpose of Congress to do so." *Id.* (quoting *Medtronic v. Lohr*, 518 U.S. 470, 485 (1996)). Absent some limiting principle, Justice Stevens cautioned, nothing would prevent judges from "running amok" with the "frustration-of-purposes" branch of implied conflict

preemption, applying it to invalidate a range of state laws that Congress never intended to be trumped by federal law. *Id.* at 907.

As explained *supra* at I.A, this is exactly what has occurred. And this outcome, far from surprising, is born from the doctrine itself. As this Court has instructed, the "frustration-of-purposes" inquiry requires a court first to ascertain the "full purposes and objectives" of the federal law and then to decide whether the state law poses an "obstacle to the accomplishment and execution" of those purposes and objectives. *Hines v. Davidowitz*, 312 U.S. 52, 67 (1941). Yet courts are given no direction for how to go about determining whether, under the circumstances of a particular case, the challenged state law stands as an obstacle to the accomplishment of the full purposes of Congress. This Court has said the task consists of "examining the federal statute as a whole" and "identifying its purpose and intended effects," but has given little additional guidance except to say that the determination is "a matter of judgment." *Crosby v. Nat'l Foreign Trade Council*, 530 U.S. 363, 373 (2000). The Court has not identified, with any precision, which factors should be considered when analyzing this preemption question or how much weight should be accorded various aspects of the "entire scheme." *Savage v. Jones*, 225 U.S. 501, 533 (1912) (instructing courts to consider the "entire scheme" of the at-issue statute or regulation); *see also Gade v. Nat'l Solid Wastes Mgmt. Ass'n*, 505 U.S. 88, 98 (1992) (directing courts to "[l]ook[] to the

provisions of the whole law, and to its object and policy") (quoting *Pilot Life Ins. Co. v. Dedeaux*, 481 U.S. 41, 51 (1987)); *Hines*, 312 U.S. at 69-74 (explaining that the inquiry should rely on "the nature of the power exerted by Congress, the object sought to be attained, and the character of the obligations imposed by law").

Indeed, this Court's own decisions applying this doctrine demonstrate just how malleable the approach can be. In *Geier*, for example, the majority relied on a diverse set of considerations that included agency comments, regulatory history, and agency litigating positions to discern the purposes of the agency regulation. *See* 529 U.S. at 875-81. In *Wyeth*, by contrast, this Court rejected the Government's litigating position and the agency's contemporaneous comments as useful indicia of federal purpose. *See* 129 S. Ct. at 1201-03. The Court has even relied on public sentiment, statements of individual Members of Congress, and agency or congressional inaction to ascertain the purposes of a federal law. *See, e.g.*, *Hines*, 312 U.S. at 69-74. It is no wonder, then, that under the guise of the "frustration-of-purposes" branch of this Court's preemption doctrine, courts "routinely invalidate" state laws based on an assortment of rationales, including "perceived conflicts with broad federal policy objectives, legislative history, or generalized notions of congressional purposes that are not embodied within the text of federal law." *Wyeth*, 129 S. Ct. at 1205 (Thomas, J., concurring). This type of "freewheeling judicial inquiry into

whether a state statute is in tension with federal objectives," inevitably produces "vague" and "potentially boundless" justifications for striking down state laws. *Id.* at 1207-08 (internal quotations omitted).

2. In addition to the practical dangers in its application, "frustration-of-purposes" preemption also suffers from serious doctrinal flaws. The *sine qua non* of preemption jurisprudence is Congress's intent. The Supremacy Clause requires that any preemption analysis "start with the assumption that the historic police powers of the States were not to be superseded by [a] Federal Act unless that was the clear and manifest purpose of Congress." *Jones v. Rath Packing Co.*, 430 U.S. 519, 525 (1977). Thus, any understanding of the scope of preemption of a statute "must rest primarily on a fair understanding of *congressional purpose*." *Medtronic*, 518 U.S. at 485-86; *see also Malone v. White Motor Corp.*, 435 U.S. 497, 504 (1978) (instructing that the purpose of Congress is the "ultimate touchstone" in every preemption case).

Whereas the task of identifying congressional purpose is relatively straightforward in express preemption cases, *see e.g., English v. Gen'l Elec. Co.*, 496 U.S. 72, 78 (1990) ("[W]hen Congress has made its intent known through explicit statutory language, the courts' task is an easy one"); *but cf. Cippollone v. Liggett Group, Inc.*, 505 U.S. 504 (1992) (demonstrating that even the task of finding express preemption is sometimes exceedingly difficult), determining congressional intent is at its most difficult in "obstacle" or "frustration-of-purposes" cases, which

often arise under broad congressional mandates ordering administrative agencies to set minimum safety standards or labeling requirements. *See, e.g.*, *Geier*, 529 U.S. at 875. In this context, neither the plain language of the statutes nor their implementing regulations provide much – if any – useful evidence regarding congressional intent on preemption.

Instead, "frustration-of-purposes" preemption relies on an inherently flawed premise: that courts can ferret out the purposes behind an agency regulation and determine the extent to which they are affected by a state law. It is difficult enough to determine the congressional purposes underlying a *statute*.[13] When courts speculate about the reasons behind an agency's regulation – which they

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[13] As this Court has explained, congressional laws in their final form often embody disparate, even divergent, objectives. *See Wyeth*, 129 S. Ct. at 1215 (Thomas, J., concurring) ("Federal legislation is often the result of compromise between legislators and groups with marked but divergent interests."); *Fitzgerald v. Racing Ass'n of Cent. Iowa*, 539 U.S. 103, 108 (2003) (explaining that laws often embody multiple, even contrary, objectives); *see also Ragsdale v. Wolverine World Wide, Inc.*, 535 U.S. 81, 94 (2002) (identifying congressional compromise in final version of statute); *Legal Services Corp. v. Velazquez*, 531 U.S. 533, 561 (2001) (rejecting interpretation of statute that would "eliminate a significant *quid pro quo* of the legislative compromise"). Even if we "suppose that all members of Congress can agree on the 'full purposes and objectives' behind a particular federal statute[,] [t]here still is no reason to assume that they would want to displace whatever state law makes achieving those purposes more difficult." Caleb Nelson, *Preemption*, 86 VA. L. REV. 225, 280 (2000).

necessarily must do under a "frustration-of-purposes" analysis – they exercise a power not granted to them and traffic in a dangerous form of legal fiction. *Cf. Wyeth*, 129 S. Ct. at 1217 (Thomas, J., concurring) ("Judicial supposition about Congress' unstated goals" undermines the settled judicial rule that courts must "merely interpret the language of the statutes enacted by Congress.") (quoting *Barnhart v. Sigmon Coal Co.*, 534 U.S. 438, 461 (2002)). The key element in any preemption inquiry – the element that ensures that a court remains faithful to the Supremacy Clause – is "whether the state law conflicts with the *text* of the regulation or statute." *Wyeth*, 129 S. Ct. at 1208 (Thomas, J., concurring) (emphasis added). As Justice Thomas has explained, "[w]hen analyzing the pre-emptive effect of federal statutes or regulations validly promulgated thereunder, 'evidence of pre-emptive purpose [must be] sought in the text and structure of the [provision] at issue.'" *Id.* at 1207 (quoting *CSX Transp., Inc. v. Easterwood*, 507 U.S. 658, 664 (1993)).

It almost goes without saying that an approach that asks a court to ascertain "broad federal policy objectives" from the record of an administrative rulemaking "wander[s] far from the statutory text." *Id.* at 1205. When these "objectives" are then used to strike down state laws, the Supremacy Clause is transformed from a guardian of the federal-state balance of power into a threat to the core values of federalism on which this country was founded. *Id.*

3. Given these concerns, a majority of members of this Court have, at various times, but with increasing alacrity, echoed Justice Stevens' call (joined by Justices Ginsburg, Thomas, and Souter), for a return to a more principled approach to implied conflict preemption. In *Gade*, Justice Kennedy resisted the "undue expansion of our implied preemption jurisprudence," which he found "neither wise nor necessary." 505 U.S. at 109 (Kennedy, J., concurring). Any conflict, in his view, "must be irreconcilable. . . . The existence of a hypothetical or potential conflict is insufficient to warrant the preemption of the state statute." *Id.* at 110. Thus, conflict preemption, in his view, "should be limited to state laws which impose prohibitions or obligations which are in direct contradiction to Congress' primary objective, as conveyed with clarity in the federal legislation." *Id.*

Justice Scalia, as well, has refused to endorse this Court's sweeping application of the "frustration-of-purposes" standard. In *Bates v. Dow Agrosciences LLC*, he agreed that the preemption analysis should be limited to the plain language of the at-issue federal statute. *See* 544 U.S. 431, 455-59 (2005) (Scalia, J., joining with Thomas, J., concurring in part and dissenting in part). Doing more, including relying on legislative history to ascertain the congressional purposes of the statute, was both unnecessary and unjustified. Justice Scalia ultimately concurred with Justice Thomas that the decision not to undertake an analysis into the underlying principles of a statute to

decide preemption issues "comports with this Court's increasing reluctance to expand federal statutes beyond their terms." *Id.* at 459.[14]

4. The foregoing make clear that the time has come to disavow the "frustration-of-purposes" implied preemption doctrine. Doing so would largely eliminate the judicial and executive excesses that occurred in the wake of *Geier*, while, at the same time, preserving the preeminence of federal law in areas where the requirements of state and federal law actually contradict each other. In the face of scores of cases dramatically – and unjustifiably – expanding the use of this doctrine to invalidate legitimate exercises of state sovereignty, the efficacy of the "frustration-of-purposes" implied conflict preemption conceit is no longer defensible. As a majority of current Justices have instructed, placing the power of

[14] Commentators and advocates from across the ideological spectrum have, for years, also expressed strong concerns about the deep flaws inherent in this doctrine. *See* Laurence H. Tribe, AMERICAN CONSTITUTIONAL LAW 1177 (3d ed. 2000) ("[P]reemption analysis is, or at least should be, a matter of precise statutory construction rather than an experience in free-form judicial policymaking."); Erwin Chemerinsky, CONSTITUTIONAL LAW PRINCIPLES AND POLICIES 377 (2d ed. 2002) (stating that the "Court purports to be finding congressional intent" when it is really "left to make guesses" because the intent is obscured); Kenneth Starr et al., THE LAW OF PREEMPTION: A REPORT OF THE APPELLATE JUDGES CONFERENCE 36, 38 (1991) (explaining that "frustration of purposes" preemption "encourages courts to make less than fully textured, careful judgments about the central or animating concern of a statute" and "demands a high degree of judicial policymaking").

preemption in the hands of Congress, "which is far more suited than the Judiciary to strike the appropriate state/federal balance" and requiring "that Congress speak clearly when exercising that power," would allow the "structural safeguards inherent in the normal operation of the legislative process to operate to defend state interests from undue infringement." *Geier*, 529 U.S. at 907 (Stevens, J., dissenting). This Court should reaffirm that, absent express preemption, state law should be displaced only where compliance with federal and state law would be an "impossibility." *See Wyeth*, 129 S. Ct. at 1208-09 (Thomas, J., concurring).

B. AT THE LEAST, IMPLIED CONFLICT PREEMPTION SHOULD ONLY BE FOUND IN THE NARROWEST OF CIRCUMSTANCES, WHERE THERE IS A CLEAR AND UNMISTAKABLE CONFLICT BETWEEN STATE TORT LAW AND FEDERAL PURPOSES.

At the very least, the confusion generated by *Geier* should be addressed by clarifying the fundamental preemption principle applied in *Geier*: that "frustration-of-purposes" implied conflict preemption imposes a demanding standard that can only be met through a particularized and fact-bound analysis of the text and structure of the federal regulation at issue.

This requirement – which demands a thorough and detailed reading of the federal regulation – has

in the wake of *Geier*, often been disregarded by lower courts. Rather than undertaking the detailed analysis mandated by this Court and performed in all of *its* "frustration-of-purposes" implied conflict preemption cases, many lower courts have substituted an approach notable principally for its superficiality, looking most frequently either to whether the regulation has been held before to have preemptive effect, *see, e.g.*, *Williamson v. Mazda Motor of America, Inc.*, 84 Cal. Rptr. 3d 545, 552-54 (Cal. Ct. App. 2008), or to whether the regulation sets a minimum standard or gives manufacturers a range of options. *See, e.g.*, *Griffith*, 303 F.3d 1276 (11th Cir. 2002).

To cure this defect, this Court should, at the least, reiterate that the approach it followed in *Geier* and *Wyeth* requires more than just an uncritical scan of the regulation. Instead, a determination of whether a state law frustrates the objectives of a federal regulation necessitates a careful and exhaustive inquiry revealing "clear evidence of a conflict." *Geier*, 529 U.S. at 885. The regulatory scheme must be examined "as a whole," with sufficient attention given to the various elements that may plausibly inform a court's analysis of the purposes of the regulation and a determination of whether a state law's requirements are in direct contradiction with that federal regulation. *Crosby*, 530 U.S. at 373. And a court *must* analyze each element for its "thoroughness, consistency, and persuasiveness" before it may assess its significance for preemption purposes. *Wyeth*, 129

S. Ct. at 1201 (instructing that the weight accorded to various elements "depends on [their] thoroughness, consistency, and persuasiveness"). Finally, once a court ascertains the precise objective of the regulatory scheme, it must carefully balance the theory underlying the state common-law claim with the purposes of the regulation.

The lower court performed none of these tasks in this case. Indeed, the California Court of Appeals performed *no* independent evaluation of the federal objectives embodied by the actual version of the regulation at issue in the case. Instead, the court simply followed the broad holding endorsed in a number of cases, that *Geier* applies to any lawsuit "involving a manufacturer's choice between passive restraint options," including NHTSA's "regulation of seat belt use." *Williamson*, 84 Cal. Rptr. 3d at 553 (citing cases). That holding contradicts the fundamental principle, applied in *Geier*, that, under a "frustration-of-purposes" preemption inquiry, a proper balancing of the federal regulation's objectives with the at-issue state law must include a particularized factual analysis of the specific regulation at issue.

Absent clarification by this Court about what a proper "frustration-of-purposes" implied conflict analysis approach entails, lower courts will continue to tread on the fundamental values embodied by the Supremacy Clause. This Court has never condoned the type of conclusory, superficial analysis applied by the court below, and to do so now would effectively

repeal whatever constraints the "frustration-of-purposes" doctrine might actually possess. What is more, the approach adopted by lower courts allows both courts and agencies to easily game the system, preempting state laws that have no direct conflict with the federal law. The Court should not endorse a regime that permits such conduct. The U.S. Constitution and the federalism principles underlying our nation forbid it.

CONCLUSION

The lower court's decision finding preemption of petitioners' claims should be reversed.

Respectfully submitted,

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